

## § 203.51

## 33 CFR Ch. II (7–1–07 Edition)

99 will not be provided anywhere within the formerly protected area of the flood control work, except for rescue operations provided in accordance with § 203.13(b). As an exception, on a case-by-case basis, certain structural flood control works (or elements thereof) repaired or set back as part of the implementation of an NSAP having a non-Federal sponsor may be considered for future flood-related assistance.

(k) *Environmental considerations.* NSAP's are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects.

(l) *Requirements for Cooperation Agreement (CA)/Items of Local Cooperation—(1) Requirement for Local Cooperation.* In order to clearly define the obligations of the Corps and of non-Federal interests, a CA with the NSAP non-Federal sponsor is required. Requirements are addressed in paragraphs (1)(2) through (10) of this section. When another Federal agency is the lead Federal agency, a Memorandum of Agreement (MOA) between the Corps and that agency is required. Wording of MOA's will be similar to, and consistent with, requirements detailed in paragraphs (1)(2) through (10) of this section for CA's, with appropriate modifications based on the other Federal agencies' authorized expenditures and programs.

(2) The CA requirements of subpart G of this part are not applicable to NSAP's.

(3) *Items of Local Cooperation.* For NSAP's, non-Federal interests shall:

(i) Provide without cost to the United States all borrow sites and dredged or excavated material disposal areas necessary for the project;

(ii) Hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor; and

(iii) Maintain and operate the project after completion in a manner satisfactory to the Chief of Engineers.

(4) *Cost sharing.* The Corps may assume up to 100 percent of the costs of implementing an NSAP, subject to the limitations set forth in paragraph (c) of this section.

(5) *Eligibility under other Federal programs.* NSAP CA's shall not prohibit

non-Federal interests from accepting funding from other Federal agencies, so long as the provision of such other Federal agency funding is not prohibited by statute.

(6) *Contributed funds.* Contributed funds may be accepted without further approval by the Chief of Engineers upon execution of the CA by all parties. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.

(7) *Obligation of contributed funds.* In accordance with OMB Circular A-34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds.

(8) *Prohibition of future assistance.* The prohibition of future assistance described in paragraph (j) of this section must be included in the NSAP CA.

(9) *Assurance of compliance with Executive Order 11988.* NSAP CA's shall include acknowledgment of, and a statement of planned adherence to, Executive Order 11988, Floodplain Management, 3 CFR 117 (1977 Compilation), or as it may be revised in the future, by the NSAP sponsor.

(10) The CA must include a statement of legal restrictions placed on formerly protected lands that would preclude future use and/or development of such lands in a fashion incompatible with the purposes of the NSAP.

(m) *Acquisition of LERRD's.* (1) For the acquisition of LERRD's, reimbursement may be made to the non-Federal sponsor of an NSAP. Such reimbursements are subject to the normal Corps land acquisition process, funding caps set forth in (c) of this section, and availability of appropriations.

(2) For the acquisition of LERRD's, Corps funding may be combined with the funding of other Federal agencies, absent specific statutory language or principle prohibiting such combinations, under the terms of the MOA with other Federal agencies.

## § 203.51 Levee owner's manual.

(a) *Authority.* In accordance with section 202(f) of Public Law 104-303, the Corps will provide a levee owner's manual to the non-Federal sponsor of all flood control works in an Active status in the RIP.

(b) *Policies*—(1) *Active non-Federal projects*. A levee owner's manual developed and distributed by the Corps will be provided to all sponsors of Active non-Federal projects. The levee owner's manual will include the standards that must be met to maintain an Active status in the Rehabilitation and Inspection Program. Levee owner's manuals will also be provided, upon request, to sponsors of Inactive non-Federal projects so that the sponsors may evaluate their projects and prepare for an IEI to gain an Active status in the RIP.

(2) *Federal projects*. The Operation and Maintenance Manual specified by 33 CFR 208.10(a)(10) will fulfill the requirement of providing a levee owner's manual if the Corps has not provided a separate levee owner's manual to the sponsor of a Federal project.

(c) *Procedural requirements*. Levee Owner's Manuals will be initially provided to non-Federal sponsors of Active flood control works during scheduled CEI's and IEI's. Sponsors of Inactive projects and private levee owners will be provided manuals upon written request to the responsible Corps district.

#### § 203.52 [Reserved]

### Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

#### § 203.61 Emergency water supplies due to contaminated water source.

(a) *Authority*. The Chief of Engineers is authorized to provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality.

(b) *Policies*. (1) Any locality faced with a threat to public health and welfare from a contaminated source of drinking water is eligible for assistance.

(2) Eligibility for assistance will be based on one or more of the following factors:

(i) The maximum contaminant level or treatment technique for a contaminant, as established by the Environ-

mental Protection Agency pursuant to the Safe Drinking Water Act (*see* 40 CFR 141), is exceeded.

(ii) The water supply has been identified as a source of illness by a tribal, State, or Federal public health official. The specific contaminant does not have to be identified.

(iii) An emergency (e.g., a flood or chemical spill) has occurred that has resulted in either: one or more contaminants entering the source on a sufficient scale to endanger health; or, the emergency has made inoperable the equipment necessary to remove known contaminants.

(iv) The presence of a contaminant is indicated on the basis of other information available.

(3) Corps assistance will be directed toward the provision of the minimum amount of water required to maintain the health and welfare requirements of the affected population. The quantity of water and the means of distribution will be at the discretion of the responsible Corps official, who will consider the needs of the individual situation, the needs of the affected community, and the cost effectiveness of providing water by various methods.

(4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, with reasonable conservation measures, cannot provide adequate supplies of drinking water.

(5) Loss of water supply is not a basis for assistance under this authority.

(6) Water will not be furnished for commercial processes, except as incidental to the use of existing distribution systems. This does not prohibit the furnishing of water for drinking by employees and on-site customers. Water for preparing retail meals and similar personal needs may be provided to the extent it would be furnished to individuals.

(7) The permanent restoration of a safe supply of drinking water is the responsibility of local interests.

(8) Corps assistance is limited to 30 days, and requires the local interests to provide assurances of cooperation in a CA. (*See* subpart G of this part.) Extension of this 30-day period requires agreement (as an amendment to the previously signed CA) between the